

# **Battle Creek Zoning Board of Appeals**

# Staff Report

Meeting: August 14, 2012

Appeal #Z-03-12

To: Zoning Board of Appeals

From: Glenn Perian, Senior Planner

**Date:** July 23, 2012

**Subject:** Petition for a nonuse variance (Z-03-12) to permit two residential structures on

a single property located at 12455 Betz Rd. (property ID #'s 0083-00-670-0,

0083-00-740-0, and 0083-00-781-0).

#### Summary

This report addresses a petition from Douglas and Lori Bagwell, seeking approval of a variance (Z-03-12), to construct two residences on one parcel they own on Betz Rd.

#### **Background/Project Information**

The subject property encompasses three separate lots on Betz Rd. The subject lots are zoned AG "Agricultural District" with minimum lot widths of 150' and one acre lot size minimum requirements in the AG zone. Separately, the lots have approximately 180', 60', and 269' of frontage for a total frontage of approximately 510'. The lots separately are approximately 2.97 acres, .137 acres, and 1.37 acres in size with a total land area of approximately 4.47 acres. The attached aerial shows the configuration of the parcels, with the center parcel (0083-00-781-0) being substandard for the AG district in both area and frontage requirements. The property owner's existing 1038 square foot home is located on the northern parcel at 12455 Betz Rd. and a barn sits on the southern most parcel (0083-00-740-0). The Appellants would like to construct a new home between the barn and existing home, however, the Calhoun County Public Health Department will not approve an onsite septic system for the southern most property due to the high ground water table. The request is to combine all three parcels and to share an upgraded septic system with the existing residence and the proposed new residence. The Calhoun County Public Health Department will approve an upgraded septic system to be shared by the proposed and existing homes, but they will only approve the septic system if the system is shared and if both houses are located on the same parcel. The Appellants have verbally stated that it would be their desire to build a new residence on the two southern most parcels and keep the properties separate. As stated above, the County has ruled that this will not be allowed and in order for the Appellants to construct the new home, the parcels must be combined and a shared septic system must be used. Chapter 1236.08 CONFORMITY WITH DISTRICT REGULATIONS REQUIRED, (g) states: "...In no case shall there be more than one main building on one lot unless otherwise provided in this Zoning Code." The variance request is to construct two residences on one lot.

#### **Legal Descriptions**

 $0083-00-670-0: \ \, \text{SEC } 33\ \text{T2S } \, \text{R8W BEG AT PT OF INT OF E \& W 1/4 LI OF SD SEC \& CTR LI OF BETZ RD, SD PT DIST 453.7 FT W OF N \& S 1/4 LI OF SD SEC - CONT W ALG SD E & W 1/4 LI 632.4 FT - N 190.6 FT - E 632.4 FT - S 48 DEG 20 MIN E AT RT ANGLE WITH BETZ RD 126.75 FT TO CTR LI OF BETZ RD - S 41 DEG 40 MIN W ALG SD CTR LI OF BETZ RD 142.45 FT TO POB, CONT 2.97 A, SUBJ TO HWY EASE OVER ELY 33 FT THEREOF$ 

**0083-00-781-0:** SEC 33 T2S R8W PART OF SW 1/4 DESC AS COMM W 1/4 POST OF SEC 33 - E ALG E & W 1/4 LI 1939.82 FT TO TRUE POB - CONTN E ALG E & W 1/4 LI 263.24 FT - S 43 DEG 09 MIN 18 SEC W ALG C/L OF BETZ RD 60.38 FT - N 78 DEG 46 MIN 32 SEC W 226.27 FT TO POB, CONT 0.13 A, SUBJ TO EASE OVER ELY 33 FT FOR BETZ RD (ASSESSED WITH 0083-00-780-0 IN '97)

**0083-00-740-0** SEC 33 T2S R8W PART OF NE 1/4 OF SW 1/4 OF SD SEC: COMM W 1/4 POST OF SD SEC - DUE E ALG E & W 1/4 LI 1691.34 FT TO TRUE POB - CONTN E 248.48 FT - S 78 DEG 46 MIN 32 SEC E 226.27 FT - S 43 DEG 09 MIN 18 SEC W ALG C/L OF BETZ RD 289.62 FT - N 46 DEG 50 MIN 42 SEC W 373.30 FT TO POB, CONT 1.37 A, SUBJ TO HWY EASE OVER SELY 33 FT THEREOF (ASSESSED WITH 0078-00-780-0 IN 1998)

#### **Public Hearing and Notice Requirements**

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, July 26, 2012, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on July 23, 2012, to 15 property owners and occupants located within 300 feet of the subject parcel. We have not heard from anyone related to this request.



Aerial Photograph of the Subject Property

#### **Surrounding Land Uses**

The subject property is surrounded by large parcels used for agricultural purposes, homesites, and vacant land. The property is located in the southern portion of the City, south of I-94 and west of Helmer Rd.



#### **Applicable Zoning Ordinance Provisions**

Chapter 1234.04 (b) The Board shall have the authority to grant the following variations:

(1) **Nonuse**. If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and [MCL 125.3604(7) and (8).]

#### **Analysis**

The Appellant is requesting a variance to construct a home on a lot where a residence already exists. The Appellant has stated in the supporting material that due to the high groundwater table, as well as clay soils on the southern parcel, the Calhoun County Public Health Department will not allow a residence to be constructed on the lot. The only solution left available from the Health Department is to construct an upgraded septic system, combine the three lots, and then for the new home to share the upgraded septic system with the home located at 12455 Betz Rd. The Appellant has supplied letters from the Public Health Department outlining the option for using a shared system and they are included with the application and part of this report. The Appellant would like to utilize their land and construct a larger home for their growing family in accordance with the sketch drawing included in the packet.

Is there something unique about this lot or property that makes relief necessary? Public sanitary sewer is not available in this portion of the City, and therefore, septic systems approved by the County are utilized. We can only rely on the information submitted to us from the Health Department that the only solution to constructing a new home on the property would require combining the lots and using a shared septic system with the existing home at 12455 Betz Rd., as they have jurisdiction over issuing permits for septic systems within all of Calhoun County. We would agree with the Appellants that the essential character of the neighborhood will not be compromised in that approximately 4.5 acres is more than enough property to support two homes. Chapter 1238 and 1282 of the Planning and Zoning code states that residential uses shall be permitted on agricultural zoned property on property with at least one acre of land area. Furthermore, the Appellants have stated in a letter that they would not rent the existing home and that it would only be occupied by family members.

#### Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Nonuse Variance (Z-03-12), based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does in fact exist if the strict requirement of the Ordinance is applied to this specific building project and that the Board is authorized to grant a variance in this case. We believe that the inability of the property owners to obtain permits from the County for a septic system without combining the properties and utilizing a shared system presents substantially more than a mere inconvenience in this case. In fact, the Appellants would prefer to keep the properties separate and construct the new home on its own lot.
- B) Staff believes that the practical difficulty associated with the limitations of the land to support its own septic system is exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The land conditions are not self created and because the ordinance allows for residences on agriculturally zoned property with one acre of land area, staff believes that approximately 4.5 acres of land can support two residences.
- C)Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised.
- D)Staff believes that the variance requested is the minimum necessary to provide relief from the practical difficulty of unsuitable land for a septic system on the subject lot; therefore, we are recommending approval of the variance for this request.

# **Attachments**

The following information is attached and made part of this Staff Report.

- 1. ZBA Petition Form (Petition #Z-03-12)
- 2. Letter dated July 18,2012, from the Appellant relating to the request
- 3. 3 letters from the Public Health Department
- 4. Sketch drawing of proposed lot layout
- 5. General property information for the properties from the City Assessing Dept.
- 6. Photo of the existing home at 12455 Betz Rd
- 7. Home plans for the proposed new residence

# APPLICATION FOR A VARIANCE ZONING BOARD OF APPEALS

City of Battle Creek, Michigan

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An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

CITY OF BATTLE CREEK PLANNING DEPARTMENT

and Zoning Code (Part Twelve) of the City of Battle Creek.  CITY OF BATTLE CREEK PLANNING DEPARTMENT
Name of Appellant: DOUG (AS + LOV) BAQWELL
Address: 12455 Betz Rd. Phone: 979-2954
Name of Owner (if different from Appellant):
Address: Phone:
TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:  (Choose One) Extend Erect Waive Use Convert Enclose
Description: Allow two residential structures or
one lot.
Contrary to the requirements of Section(s) 1236.08 (G) of the Planning and Zoning Code, upon the premises known as 12455 + 12417 Betz Road Battle Creek, MI, in accordance with the plans and/or plat record attached.  The proposed building or use requires Board action in the following area(s):  Allow two residential structures on
one lot.
Property/Tax I.D. # No. $\frac{683}{0083} - \frac{60}{0083} - \frac{740}{0083} - \frac{6}{0083} - \frac{740}{0083} - \frac{6}{0083} -$

(b.) This problem is due to a unique situation not shared in common with nearby property owners because:
They all have Septic systems
They all have septic systems that meet saritation code of Calhoun County,
(c.) Granting the variance would not alter the essential character of the area because:
We would be combining 3 parcels into 1 that would
be (+-) 5 Acres. The proposed residental structure
would be 65 Feet from current residental structure. If
would be 65 feet from current residental structure. If  Parcel perked a residental structure would be allowed under cu  (d.) The problem is not self-created because: Zoning code.
Parcel water proposed structure does not
meet Calhour County sanitation code for projecte
(e.) <u>USE VARIANCES ONLY</u> It is not possible to use this particular property for any other use currently allowed in the zoning district because:
I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.
Print Appellant Name) - CO CONT BAGNELL
(Signature of Appellant) ari Pagwell
12455 Betz Road, Battle Creek, MI (Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

#### Zoning Board:

We are requesting a variance from the Planning and Zoning Code for you to waive the requirements of section 1236.08 (G) which prohibits two residential structures one parcel.

Our property consists of 4.47 acres, which is made up of three separate parcels: 12455 & 12417 Betz Road (with .13 acre parcel connecting the 2) We would like to build a new 2200 sq ft home on the parcel address of 12417 Betz Rd. However, after meeting with Calhoun County Health Department personnel the parcel would not perk in order to meet the Sanitation Code of the County to allow a private septic system on that parcel. The code does allow for us to upgrade our current residence (12455 Betz) and connect the proposed new residence (12417) to the system. In order to accomplish this we would have to combine all three parcels to fall under the "existing structure" clause of the Sanitation Code. This would put us in conflict with the Planning and Zoning Code, which prohibits two residential structures on one parcel.

We request this variance because we would like to keep our current home, as it has been in the family for over 40 yrs and is in perfectly good condition, making many improvements the last several years. The problem is it's only 900 sq ft and we have two young growing boys making it smaller and smaller each day. We would like to keep it for a family guesthouse or for our parents to move into as they are aging so we can provide care for them. We **WOULD NOT** allow it to be a rental unit or allow anyone other than a family member to occupy it. We have considered an addition but after speaking with several builders we determined it would be more cost effective to build a new home.

We feel granting the variance would not alter the area because of the fact that if the parcel of 12417 Betz Rd would meet the County Sanitation Code for a private septic system the proposed new residence could be built according to the requirements of the City Planning and Zoning Code. Additionally all current homes on Betz Road have private septic systems.

The proposed residence would be at least 65 feet from the current residence and would not alter the area because of the agricultural nature of the it; making home distances further apart than with differently zoned areas of the City.

We have also talked to several of our neighbors, who are like family because of the history, and they support us going forward with this project.

We respectfully request you grant for our variance,

Douglas A. Bagwell Lori M. Bagwell



# CALHOUN COUNTY PUBLIC HEALTH DEPARTMENT

190 E. Michigan Avenue, Ste. A100 Battle Creek, Michigan 49014

Phone: (269) 969-6370 Fax: (269) 966-1489

Lori Bagwell

"Building a better county through responsive leadership" 7-12-12

RE: Betz Rd (former Leo Wright property)

Dear Mrs Bagwell,

We previously discussed the situation on the above referenced property. As I outlined – this property was evaluated in 1996 and determined to be unsuitable for on onsite septic system that would meet the Calhoun County Sanitation Code. The property was subsequently evaluated by the Michigan Dept of Community Health with a similar finding on the water table. The issues included a high ground water table ,as well as, clay soils. Representatives from this Dept revisited the site on 6-28-12. The site conditions have not changed.

The options available also remain as follows –

- Upgrade the septic system on your current property, combine the parcels and connect any new house to the upgraded septic system.
- If zoning is prohibiting two houses on one parcel apply for conditional use permit or a variance

The Calhoun County Sanitation Code does not allow for any other viable options.

Bob Overley MA RS

Field Services Coordinator

(provided to owner at office conference 7-12-12)

STATE OF MICHIGAN



JOHN ENGLER, Governor

# DEPARTMENT OF PUBLIC HEALTH

3423 N. MARTIN L. KING JR. BLVD. P.O. BOX 30195, LANSING, MICHIGAN 48909 VERNICE DAVIS ANTHONY, MPH, Director

October 28, 1994

Ted Havens
Calhoun County Health Department
190 E. Michigan Avenue
Battle Creek, Michigan 49017

Dear Mr. Havens:

Subject: Wright Residential Building Site

Betz Road, Battle Creek Township, Calhoun County

On October 26, 1994 I met you and Sue Hauxwell, of your office, and Leo Wright at the above property to access the soil conditions. The parcel in question is parcel #2 located approximately 1/2 mile south of B Drive North. The purpose of the meeting was to access the impact a small private ditch could have on the water table in the area. The ditch in question is located approximately in the middle of the site and runs south to a county drain. The soils, as observed in the two backhoe cuts, indicate the soils to generally be loam to clay loam over sand at a 5 to 5-1/2 feet. The high water table near the road was noted at 3 feet, with free water in the pit at 5 feet. In the backhoe cut towards the ditch the high water table was noted at 1-1/2 feet, with free water noted at 3 feet. It is my opinion the present ditch, which is overgrown with trees and approximately 3 to 4 feet deep, would have minimal impact on the ground water table in the area 100 feet from the ditch. The ditch, being down gradient from the area for the sewage disposal area, would have less effect than a ditch which would intercept the water table leading to the site in question. I further believe a private drain, even if effective, cannot be relied upon to continue to be maintained to be effective when several property owners are involved.

If a county drain is installed, it is impossible to predict what impact it would have on the water table in the area. I would recommend in that case that monitoring pipes be installed to record the water table through the spring months be used to establish a high water.

Very truly yours,

Richard A. Falardeau, P.E., District Engineer Engineering and Environmental Health Services Section Division of Environmental Health

Bureau of Environmental and Occupational Health

By. John H Long, R.S., Area Sanitarian

JHL: rs

cc: John Gohlke, R.S., Division of Environmental Health



# Calhoun County DEPARTMENT OF PUBLIC HEALTH

MAIN OFFICE 190 East Michigan Avenue Battle Creek, MI 49017 (616) 966-1210

121 High Street Marahall, MI 49068 (616) 781-0950

101 North Albion Albion, MI 49224 (517) 629-9434

Certified No. P 865 552 646

June 5, 1996

Mr. Robert Pluff
21201 Capital Ave., N.E.
Battle Creek, Michigan 49017

Re: Parcel #4, Betz Rd., Battle Creek

Dear Mr. Pluff:

This department received a request to conduct a site evaluation at the above referenced location.

Soil borings revealed loam to clay loam with mottles (unsuitable) and a high water table.

This area has a past history of denial (Parcel No. 2 was denied by this department). Therefore this department must deny the issuance of a permit for private sewage disposal.

You have the right to appeal this decision as set forth by the enclosed appeals procedure.

If you have further questions, please contact this office at 966-

Sincerely,

SV

Enc.

"BUILDING & BETTER COUNTY through RESPONSIVE LEADERSHIP."

ADMINISTRATIVE SERVICES . HEALTH EDUCATION SERVICES . ENVIRONMENTAL HEALTH SERVICES PERSONAL HEALTH SERVICES . PUBLIC HEALTH NURSING . CLINIC PROGRAMS

#### **General Property Information**

#### **City of Battle Creek**

[Back to Non-Printer Friendly Version] [Send To Printer]

Parcel: 0083-00-670-0 Unit: CITY OF BATTLE CREEK

# Values are tentative until finalized by March Board of Review

[collapse] **Property Address** 12455 BETZ RD BATTLE CREEK, MI 49015-8617

[collapse] **Owner Information** 52 **Unit: BAGWELL, LORI** BAGWELL, DOUGLAS A N/A

[collapse] **Taxpayer Information BAGWELL,LORI** BAGWELL, DOUGLAS A 12455 BETZ RD BATTLE CREEK, MI 49015-8617

#### **General Information for Tax Year 2012** [collapse] \$30,651 401 - RESIDENTIAL Assessed Value: **Property Class:** 13020 - BATTLE CREEK **School District: Taxable Value:** \$19,266 **SCHOOLS** 633NW State Equalized Value: \$30,651 Map # Date of Last Name Chg: 09/16/2005 **User Number Indx:** 03/02/2001 Date Filed: N/A Notes: N/A **Historical District:** N/A Census Block Group: **Final Principal Residence Exemption** May 1st 2012 100.0000 % 100.0000 % **Final Taxable** Final S.E.V. **Previous Year Info MBOR Assessed** \$34,404 \$18,760 2011 \$34,404 \$34,404 \$18,447 2010 \$34,404

Land Information [coll							
	Frontage			Depth			
Lot 1:	0.00 Ft.			0.00 Ft.			
Lot 2:	0.00 Ft.			0.00 Ft.			
Lot 3:	0.00 Ft.			0.00 Ft.			
Total Frontage:	0.00 Ft.		Average Depth:	0.00 Ft.			
Total Acrea		2.97 AG					

# **General Property Information**

#### **City of Battle Creek**

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Parcel: 0083-00-740-0 Unit: CITY OF BATTLE CREEK

# Values are tentative until finalized by March Board of Review

Property Address	[collapse]
12417 BETZ RD BATTLE CREEK, MI 49015-8617	

Owner Information			[collapse]
BAGWELL,DOUGLAS A BAGWELL,LORI N/A	Unit:	52	

Taxpayer Information			
	BAGWELL,DOUGLAS A BAGWELL,LORI 12455 BETZ RD BATTLE CREEK, MI 49015-8617		
	27.1.122 GA22.1, 112 13626 602.		

General Information for T	ax Year 2012		[collaps
Property Class:	401 - RESIDENTIAL	Assessed Value:	\$26,310
School District:	39020 - CLIMAX SCOTTS	Taxable Value:	\$26,310
State Equalized Value: User Number Indx:	SCHOOLS \$26,310	Map # Date of Last Name Chg:	633SW 11/24/2009
		Date Filed:	10/30/2009
		Notes:	N/A
Historical District:	N/A	Census Block Group:	N/A
Principal Residence Exemption	on May 1st	Final	
2012	100.0000 %	100.0000 %	
Previous Year Info	MBOR Assessed	Final S.E.V.	Final Taxable
2011	\$26,310	\$26,310	\$26,310
2010	\$26,310	\$26,310	\$26,310

Land Info	rmation				[collapse]
	Frontage			Depth	
Lot 1:	269.05 Ft.			229.28 Ft.	
Lot 2:	269.05 Ft.			33.00 Ft.	
Lot 3:	0.00 Ft.			0.00 Ft.	
Total Frontage:	538.10 Ft.		Average Depth:	119.38 Ft.	
Total Acrea	_	1.37 AG			

#### **General Property Information**

#### **City of Battle Creek**

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Parcel: 0083-00-781-0 Unit: CITY OF BATTLE CREEK

# Values are tentative until finalized by March Board of Review

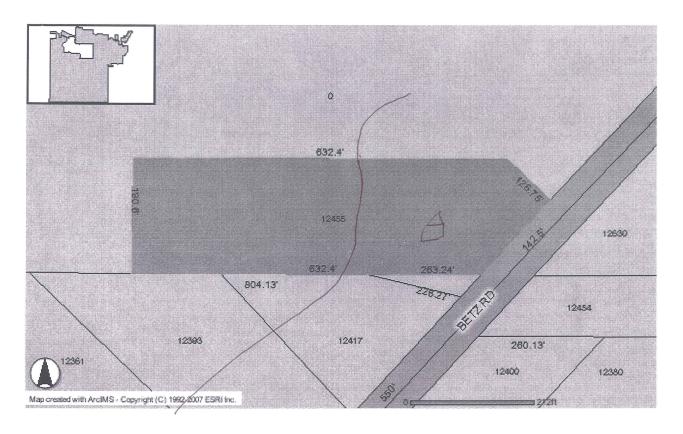
**Property Address** [collapse] BETZ RD BATTLE CREEK, MI 49015-8617

[collapse] **Owner Information** Unit: 52 WRIGHT,LORI M N/A

[collapse] **Taxpayer Information** BAGWELL,LORI M 12455 BETZ RD BATTLE CREEK, MI 49015-8617

[collapse] **General Information for Tax Year 2012** 402 - RESIDENTIAL Assessed Value: \$1,620 **Property Class:** VACANT 39020 - CLIMAX SCOTTS Taxable Value: **School District:** \$600 **SCHOOLS** State Equalized Value: \$1,620 Map # 633SW **User Number Indx:** Date of Last Name Chg: 06/15/2012 Date Filed: 02/10/2012 N/A Notes: **Historical District:** Census Block Group: N/A N/A **Principal Residence Exemption** May 1st **Final** 100.0000 % 2012 100.0000 % **Previous Year Info MBOR Assessed** Final S.E.V. Final Taxable \$585 2011 \$1,620 \$1,620 \$576 2010 \$1,845 \$1,845

Land Info	rmation				[collapse]
	Frontage			Depth	
Lot 1:	60.38 Ft.			0.00 Ft.	
Lot 2:	0.00 Ft.			0.00 Ft.	
Lot 3:	0.00 Ft.			0.00 Ft.	
Total Frontage:	60.38 Ft.		Average Depth:	0.00 Ft.	
Total Acrea	_	0.13 AG			

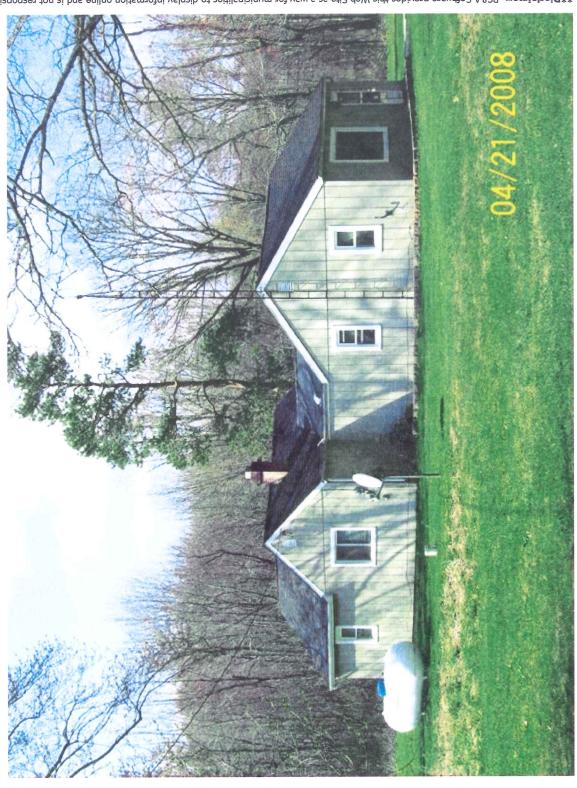


# City of Battle Creek

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# Image/Sketch for Parcel: 0083-00-670-0

Caption: 1 PHOTO 2008



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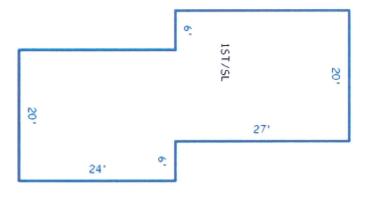
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Privacy Policy

## Image/Sketch for Parcel: 0083-00-670-0

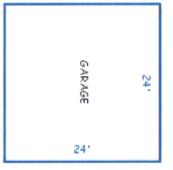
## **City of Battle Creek**

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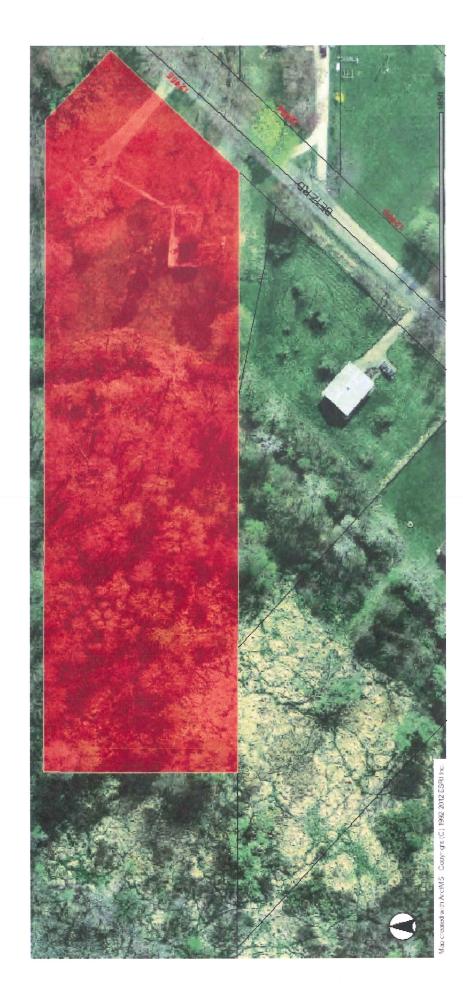
Caption: Building 1



0083-00-670-0

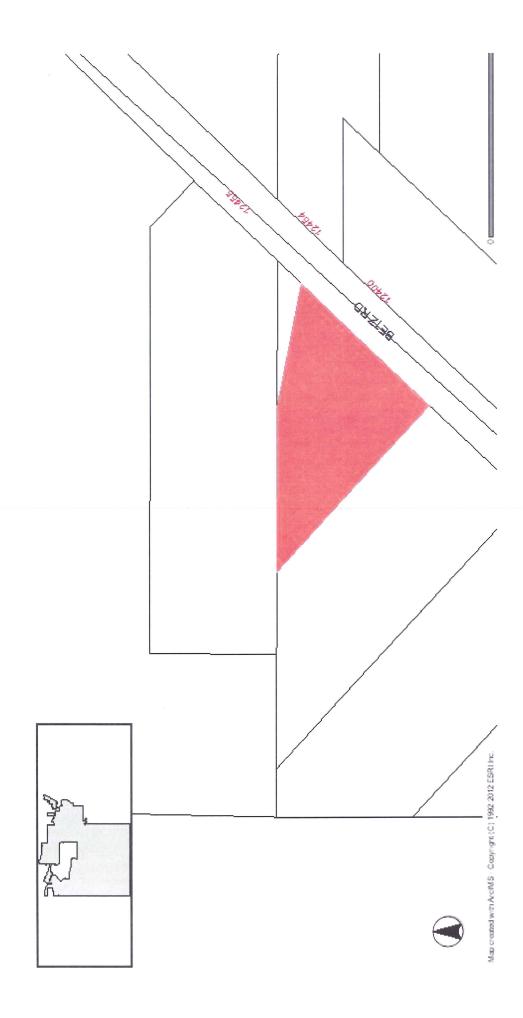


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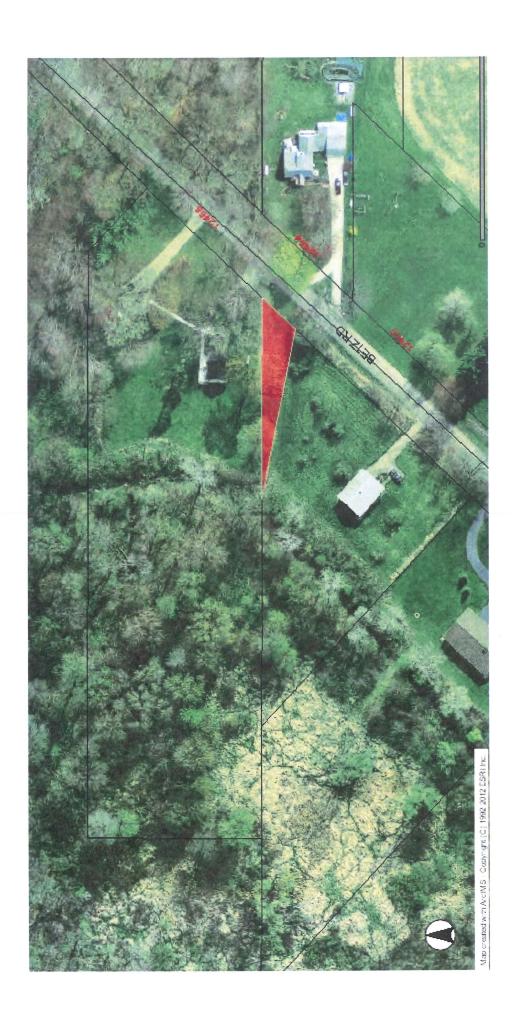


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